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Chairman: Mr. Gómez Robledo ..... (Mexico)

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The meeting was called to order at 11 a.m.

Agenda item 80: The rule of law at the national and international levels (*continued*) (A/61/142)

1. **Ms. Kamenkova** (Belarus) said that the rule of law was a crucial issue, not only for States which had recently suffered from armed conflicts, but for all States Members of the United Nations. A rapid solution by the international community as a whole was therefore required and the United Nations was the best possible forum for finding such a solution. A resolution on the topic might contain the following points: reaffirmation of the integrity of the norms and principles of the Charter of the United Nations, the primacy of international law in the resolution of international issues and the role of multilateralism in strengthening the rule of law at the international level; the fact that the Office of Legal Affairs must assist States in their implementation of key international agreements adopted under the auspices of the United Nations; encouragement of the more active use of the institution of advisory opinions from the International Court of Justice on the application of the norms of international law; further consideration in the Sixth Committee of draft articles prepared by the International Law Commission, with a view to giving them the appropriate form in international law; the forging of much closer links between the legal services of the United Nations and other United Nations organs, programmes and funds, as well as with international financial institutions; encouragement of the holding of seminars and conferences and the implementation of other measures to disseminate a knowledge of international law, including, possibly, the convening of a congress on international law or the rule of law; and backing for the Secretariat's efforts to publish a handbook on the practice of the Security Council and other United Nations organs. In supporting such a resolution, her Government proceeded on the assumption that the Sixth Committee would continue to consider the international legal aspects of topics and would not encroach on the competence of the Peacebuilding Commission or of other United Nations organs.

2. While the Secretary-General's initiative to set up a unit within the Secretariat to further the principle of the rule of law was welcome, the establishment of the Peacebuilding Commission, as a new organ in the United Nations system, must not adversely affect the work of the existing legal organs of the Organization, or result in the senseless duplication of work. If no consensus was reached on the issue at the current session, it should be included in the agenda of the General Assembly's sixty-second session.

3. **Ms. Salasini** (Zambia) said that justice, peace, sustainable development and good governance were all interdependent and they, together with mechanisms and institutions to secure their efficacy, formed the rule of law. Respect for the latter at both the national and international levels was of great importance. The constitution of her country derived its validity from the rule of law and the purpose of several national institutions was to make sure that democratic practices prevailed and that human rights obligations were fulfilled at all times.

4. At the international level, her Government wished to join other members of the international community in ensuring that respect for the rule of law was upheld. Recognition of the jurisdiction of the International Criminal Court and of the tribunals for the former Yugoslavia and Rwanda would reaffirm the collective will to end impunity for serious violations of international law. If the rule of law was disregarded, treaties would become redundant. After signature and ratification, the provisions of treaties should be incorporated into national law, as only by championing the rule of law could Member States foster world peace and development. Since the rule of law encompassed many aspects, particular topics should be selected for discussion in meaningful and practical debates.

5. **Ms. Wilcox** (United States of America) said that international law was of great value; her Government had therefore worked actively to expand its dialogue with other countries on international law issues. Stability and order in international relations and cooperation among States when addressing common challenges were important objectives which ought to be borne in mind when the Sixth Committee considered means of consolidating the rule of law.

6. States must honour the obligations they accepted under bilateral and multilateral treaties. To that end, they ought to take a number of steps before and after becoming parties to treaties: they must carefully analyse treaty texts during their negotiation to ensure that they would be able to comply with them, since respect for international law was ill-served if States concluded agreements which they were unable to

implement. States must also consider what changes would have to be made to domestic laws to permit compliance with the treaty obligations they intended to assume and consider making such changes before becoming a party to the treaty.

7. Once treaties had entered into force, the parties to them should discuss measures that might be taken to promote effective compliance. When considering the role it might play in that area, the Sixth Committee must take care not to duplicate those efforts. In addition, it was necessary to recall the importance the Charter attached to the peaceful settlement of disputes among States and of the major contribution international courts and tribunals could make in that respect. Such courts and tribunals were most effective and commanded the respect and confidence of States when they provided neutral, depoliticized forums for resolving disputes and when they operated efficiently. Efforts to strengthen existing dispute settlement mechanisms would be most useful if they focused on ways of attaining those objectives.

8. If a specific topic under the general heading of the rule of law were to be selected for consideration at the next session of the General Assembly, it should have a practical focus and provide a basis for constructive deliberation. One such topic would be ways in which existing United Nations activities and strategies for technical assistance related to the rule of law might be better coordinated and rendered more effective.

9. Her delegation supported the proposal that the Secretary-General should be asked to prepare a report on current United Nations rule of law activities, provided that the report was limited to factual information and did not address the steps taken by individual States to implement the rule of law, or contain any recommendations on the steps States should take in that regard. It would be more appropriate for any proposals on those topics to be generated by members of the Sixth Committee. Moreover the preparation of such a report could be supported only if did not require additional resources.

10. **Mr. Sinaga** (Indonesia) said that the rule of law laid the foundation for good governance, worldwide prosperity and peaceful coexistence and cooperation among States. International law was an instrument for achieving those objectives, because it defined acceptable standards of behaviour within the international system.

11. At the national level, the rule of law guaranteed peace and stability and fostered good governance and sustainable socio-economic development. For that reason, it was vital that all components of society, including Governments, should respect and promote the rule of law in order to secure prosperity and justice for all. The rule of law was also of tremendous significance to relations among States, since a rule-based international system underpinned the principle of equality among States before the law, ensured the stability essential for cooperation among them and made for predictability in inter-State relationships.

12. A number of institutions had been established within the framework of the United Nations to promote the rule of law, the most relevant being the judicial mechanisms for settling disputes among Member States, particularly the International Court of Justice. The additional judicial bodies which had been created would give States more options for settling differences amicably. It was a remarkable testament to the will of States to regulate their collective conduct that they generally abided by the decisions of those judicial institutions. That adherence in turn promoted further respect for justice and the rule of law in inter-State affairs. In that connection, he therefore looked forward to the operation of the voluntary trust fund to assist States in their legal proceedings before the International Court of Justice.

13. The International Law Commission and the United Nations Commission on International Trade Law, by making a major contribution to the progressive development and codification of international law, both constituted pillars of the rule of law. The Sixth Committee could further the process by examining the recommendations of those institutions and turning them into conventions or declarations of legal principles to govern the conduct of States.

14. Globalization made the harmonization of national laws all the more essential. The United Nations could do much to provide States with practical assistance in their endeavours to incorporate international law into municipal law. A rule of law assistance unit mandated to help States with capacity-building could reinforce coordination among a variety of bodies with a view to securing universal adherence to international law.

15. The General Assembly, which provided a forum for the universal, comprehensive and coordinated consideration of the rule of law, should develop a strategy enabling it to focus on specific issues. While the Security Council had been right to scrutinize certain aspects of international law, particularly in a post-conflict context, as part of its responsibility for maintaining peace and security, the General Assembly, as the most representative legislative organ of the United Nations, should assume the leading role in deliberating all the facets of the rule of law influencing inter-State relations. The International Court of Justice, through advisory opinions, must clarify the Charter-based mandate of the Organization's principal organs, which was the subject of diverging views. The topic under consideration should therefore be included in the agenda of future sessions.

16. **Mr. Abdelsalam** (Sudan) commended the methodology chosen by the Bureau of the Sixth Committee to reflect on such an important issue as the rule of law, but said that it was premature to request a report on the topic by the Secretary-General, since time was still needed for a thorough examination of all aspects of the matter. First, a road map was needed, setting out the Committee's ideas, areas of interest and priorities, which would then form the basis of a report by the Secretariat containing recommendations. Members should guide the debate and indicate what they wanted to see in the report. The whole discussion should be conducted in an open-ended ad hoc committee. Delegations should be allowed ample time to consult their Governments. The topic was new and therefore called for a holistic approach. As many of the related issues were interlinked and needed to be discussed together, it was also too early for a thematic debate.

17. **Mr. Shah** (Pakistan) said the interest shown by Member States in the topic during informal discussion boded well for the success of the initiative by the delegations of Liechtenstein and Mexico. It was a significant challenge to select topics for the sixty-second session of the General Assembly. His own delegation urged that the proposal before the Committee be handled in a fair and transparent manner, and that all the suggested topics be made known to Member States. Pakistan was in favour of establishing an ad hoc committee to deal with the organization of work on the question. It also had a special interest in the role of the International Court of Justice in the settlement of international disputes, and he hoped that would be actively considered as a topic for future discussion.

18. **Mr. Elji** (Syrian Arab Republic) said it was a matter of urgency for the General Assembly to discuss the question of the rule of law at the international level. The question had already been discussed by the Security Council, thus violating the authority and usurping the role of the General Assembly. The 2005 World Summit Outcome had focused attention on the rule of law at the national and international levels, and its importance had been further highlighted by recent events involving the use or threat of force and the occupation of territory. Thousands of years earlier, Arab civilization had sown the seeds of the rule of law with the Hammurabi Code and the Phoenician laws. Relations between the Hittites of Syria and the Egyptian Pharaohs had been regulated by treaty. Islamic civilization had led to the promulgation of many laws to govern different aspects of life, including the rules of good governance and policing. At the international level, Islamic law recognized the precepts of humanitarian law. International law had continued to develop throughout history, adapting to the characteristics of different societies. The Sixth Committee should focus on ways of developing systems for providing to countries, at their request and within the framework of the United Nations, financial and technical assistance that took their special characteristics into account.

19. The United Nations, as the guardian of the rule of law, had to establish conditions to ensure that international justice prevailed and that obligations were complied with in accordance with its Charter. The General Assembly and the Sixth Committee operated together to promote the rule of law internationally through codification and the promulgation of international treaties. The International Law Commission, by developing rules of law, played an important role in facilitating the work of the General Assembly. The Security Council and the International Court of Justice both played important roles in coordinating action by States to give effect to the rule of law. However, much remained to be done to ensure that legality prevailed in international relations, because currently the will of the strongest was imposed on the weakest. At the national level, there were rules to ensure the equality of rights and obligations, but at the international level the sovereign equality of States

was no more than an abstract principle, because the Security Council frequently interfered in matters within the purview of the General Assembly. Its decision-making was selective and often based on double standards. As for the International Court of Justice, its dispute settlement procedures were flawed by being derived from a voluntary mechanism.

20. Respect for the Charter of the United Nations was a key test of the rule of law at the international level. The Charter was, however, violated in a unique way in the Arab region, through the continued occupation of Arab territories, ongoing aggression, and the violation of basic freedoms, notwithstanding the resolutions of the General Assembly and the Security Council and the advisory opinion of the International Court of Justice on the construction of a wall in occupied Palestinian territory. That situation demonstrated clearly the weakness of the rule of law at the international level, which had much to do with one of the permanent members of the Security Council. When the Security Council acted under Chapter VII of the Charter its decisions must comply with the principles of international law, and the International Court should monitor its work in that regard.

21. **Mr. Dolatyar** (Islamic Republic of Iran) welcomed the timely initiative by the delegations of Liechtenstein and Mexico. He would also welcome the establishment of an ad hoc group to discuss the proposal. However, the proposal as set out in the explanatory memorandum attached to document A/61/142 needed further refinement and consultations should be held for that purpose. It might be premature to call for a report by the Secretary-General at the current stage.

22. **Ms. Negm** (Egypt) welcomed the inclusion of the proposal in the Committee's agenda. She agreed with the representative of the Sudan that discussion of the item should be conducted with the utmost transparency. Her delegation was prepared to engage in constructive discussion to determine which purposes the proposed topic was intended to achieve. It would, however, be premature to request a report from the Secretary-General without first seeking the views of Member States.

Agenda item 33: Comprehensive review of the whole question of peacekeeping operations in all their aspects (A/60/980)

23. **The Chairman** drew attention to the note by the Secretary-General (A/60/980), containing the report of the Group of Legal Experts on ensuring the accountability of United Nations staff and experts on mission with respect to criminal acts committed in peacekeeping operations.

24. **Mr. Talbot** (Guyana), speaking on behalf of the countries of the Rio Group, welcomed the recommendations of the Group of Legal Experts, including the possible elaboration of a convention to address jurisdiction and other issues relating to the accountability of United Nations staff and experts on mission. He paid tribute to the work of the numerous men and women, almost 100,000 in all, who put their lives at risk in peacekeeping operations. He recognized that a small minority of peacekeepers had involved themselves in abhorrent acts warranting the most serious attention. He strongly supported efforts to ensure that the misconduct of a few people did not compromise the credibility of the United Nations and its peacekeeping operations. The policy of zero tolerance, especially for sexual abuse and exploitation, must apply to all the personnel of peacekeeping missions, whether military, police or civilians. Member States and the Secretariat must act together in a decisive manner, taking firm measures to prevent abuse and exploitation and to enforce United Nations standards of conduct in peacekeeping missions. Their efforts must be guided by the principles that no wrongful act should be left unpunished, and that due process of law should apply to every person involved.

25. He emphasized the value of comprehensive training for mission personnel in the required standards of conduct at the time of induction and throughout the mission assignment. Steps should be taken to incorporate measures against misconduct into legal documents signed between the United Nations and troop-contributing countries, bearing in mind that criminal and disciplinary responsibility for members of military contingents remained within the exclusive jurisdiction of those countries.

26. In view of the difficulty of gathering sufficient evidence for prosecution under the applicable substantive and procedural law, the countries of the Rio Group were convinced that the host country, the United

Nations and the troop-contributing countries should cooperate closely in investigating those accused of misconduct. That would require the effective strengthening of the Office of Internal Oversight Services, in accordance with General Assembly resolution 59/287. Investigators must comply fully with the principles of impartiality and fairness. Evidence must be properly gathered and efficient reporting channels must be made available. The Rio Group emphasized the need for close coordination between the relevant United Nations offices, especially the Department of Peacekeeping Operations, the Office of Legal Affairs and the Office of Internal Oversight Services. The utmost transparency must be observed towards the troop-contributing countries. The Rio Group supported the concept of a National Investigation Officer (NIO) in relation to members of military contingents.

27. **Mr. Playle** (Australia), speaking on behalf of the CANZ group (Australia, Canada and New Zealand), said that the group had contributed to many United Nations peacekeeping operations and was, therefore, greatly concerned when those operations were undermined by the criminal acts of a few. He commended the measures taken to prevent peacekeeping personnel from committing crimes; when prevention failed, however, offenders must not enjoy impunity. He welcomed the proposal that the draft model Memorandum of Understanding between troop-contributing countries and the United Nations should include a specific requirement that such countries should investigate and prosecute any crimes committed by their personnel.

28. The CANZ group supported measures to remove obstacles to the accountability of peacekeeping personnel but wished to reflect further on the specific recommendations set out in the report of the Group of Legal Experts (A/60/980). The role of the Sixth Committee in that regard should be to focus on the recommendations contained in section IV on jurisdiction of States other than the host State and, in particular, issues relating to the draft convention annexed to the report.

29. The CANZ countries were as yet undecided about the desirability of such a convention. As proposed in the report, it would oblige States parties to extradite or prosecute United Nations officials or experts who committed serious crimes in the context of a United Nations peacekeeping operation, but it would not affect the immunities they enjoyed under the Convention on the Privileges and Immunities of the United Nations, in particular immunity from legal process for acts committed by such personnel in the performance of their duties, which could only be waived by the Secretary-General. The Convention would not cover military personnel of national contingents assigned to the military component of a peacekeeping operation and would apply only to "serious crimes". The group had proposed two possible definitions of such crimes, and there should be immediate agreement that no impunity could be permitted for the crimes covered by either definition. The draft convention provided for the possibility of criminal proceedings being instituted in the host State; where necessary, capacity-building measures might be taken to that end, but the other options contemplated should also be explored, such as prosecution by the State of nationality of the alleged offender or by the State in which the offender was located. The CANZ countries, for their part, had enacted laws to cover crimes committed overseas by their respective nationals and had systems to investigate misconduct by their police and military officers, wherever it took place. He urged all States to consider enacting similar laws to cover crimes that might be committed extra-territorially by their nationals during peacekeeping operations. United Nations officials and experts must be held accountable for any serious crimes committed in the field and must be seen by the host State and its people to be brought to justice, but at the same time care should be taken to ensure respect for their human rights.

30. **Ms. Ebrahim** (Kuwait) commended the Special Committee on Peacekeeping Operations and the Group of Legal Experts for their respective reports (A/60/19 and A/60/980) and thanked the Department of Peacekeeping Operations for the vital role it played in the maintenance of international peace and security. Kuwait, which had hosted many peacekeeping operations, notably the United Nations Iraq-Kuwait Observer Mission, supported the principle of the draft convention on the criminal accountability of United Nations officials and experts on mission. Excessive reliance on the immunity of such personnel could result in them not being held criminally accountable for their acts. Codified provisions were therefore needed to guard against that risk.

31. **Mr. Ayua** (Nigeria) said the United Nations peacekeeping operations had earned the trust of many

victims of conflict situations, as was reflected in the support such operations received in the field. Nigeria therefore condemned any acts that threatened the lives or security of peacekeepers; crimes against them must not go unpunished. One of the best ways of showing the necessary continuing support for peacekeeping personnel was to retool the mechanism for consultations between the Security Council, troop-contributing countries and the Department of Peacekeeping Operations so as to take into account the lessons learned and the specific concerns of the troops themselves. New policies would also no doubt benefit from the views of the Special Committee on Peacekeeping Operations.

32. Nigeria had been closely associated with United Nations peacekeeping operations since joining the Organization in 1960 and was an active participant in all related matters. It welcomed the swift action taken by the Secretary-General to address the growing problem of deviant behaviour by peacekeeping personnel, in particular by setting up the Group of Legal Experts which had, inter alia, recommended that a comprehensive policy be developed to guide peacekeepers in the field. The circulation of a handbook of rules for peacekeepers would be especially welcome, not only because it would remove any possible excuses for misconduct but also because it would complement the efforts made by countries to prepare their troops and police for peacekeeping service.

33. His Government associated itself with the Group's recommendations, which could help to secure the rule of law and safeguard the image of the United Nations. The resulting policies should be of universal application and not appear to be directed exclusively against peacekeepers from developing countries. Nigeria firmly supported a zero-tolerance policy by the United Nations towards sexual exploitation and abuse, as would continue to be reflected in its own training programmes for prospective peacekeepers, without infringing upon their fundamental freedoms.

34. **Mr. Amri** (Indonesia) said that the report of the Group of Legal Experts offered a good basis for further reflection on the issues involved. United Nations peacekeepers risked their lives for the sake of peace in conflict zones; international law therefore granted them immunities in the performance of their duties, while States were required to give them maximum protection and bring to justice those who threatened their safety and security. However, the immunities they enjoyed carried an obligation to respect the laws of the host State.

35. His delegation shared the concern about the need to make sure that peacekeepers were held accountable for crimes they committed, in accordance with due process and in keeping with the principle of equality of all before the law. Moreover, justice must be seen to be done, otherwise the credibility of United Nations peacekeepers as a whole could be damaged. For that reason, world leaders had in 2005 supported a zero-tolerance policy for such crimes. His delegation welcomed the range of options proposed in the draft convention for the prosecution of offenders, having regard in particular to the difficulties faced by the legal system of the host State in the wake of a prolonged conflict. However, Governments needed further time to reflect on the draft, which had only just been made available. Over and above the adoption of a legally binding instrument, pre-deployment and ongoing training of peacekeeping personnel should include a warning that their misconduct might amount to criminal conduct, since compliance with certain standards of behaviour was crucial for the credibility of peacekeeping operations on the ground.

36. **Mr. Abdelsalam** (Sudan) said that peacekeeping missions were important mechanisms for assisting countries torn by conflict to implement peace agreements and create the conditions for peace. The United Nations continued to be the best institutional framework for such efforts. With the increasingly frequent use of peacekeeping missions, the Secretary-General had done well to institute an objective evaluation of the mechanism to meet current needs, improve efficiency and address perceived gaps. The report of the Panel on United Nations Peace Operations (A/55/305-S/2000/809) under the chairmanship of Mr. Brahimi had been the first serious analysis of peacekeeping operations, and its recommendations continued to be useful. Experience had shown that the difficult peacekeeping operations undertaken by the United Nations required considerable planning to be effective.

37. The Security Council, in ordering such operations, must ensure that they were not used to serve narrow political interests, and the Department of Peacekeeping Operations must exert its best efforts to ensure that their execution was transparent, effective, free of double standards and in conformity with the

Charter. As the host of one of the largest United Nations peacekeeping operations in the context of the implementation of peace agreements, Sudan was alive to the importance of cooperating with the peacekeeping operations but was also convinced of the need to ensure that the operations were not used as a means to settle scores on political or humanitarian pretexts.

38. With regard to the report of the Group of Legal Experts on ensuring the accountability of United Nations staff and experts on mission with respect to criminal acts committed in peacekeeping operations (A/60/980), his delegation agreed with the Group's view of its mandate as referring to accountability for criminal acts in general and not limited to crimes involving sexual exploitation and abuse. The Secretary-General's bulletin ST/SGB/2003/13 contained a broad definition of acts of sexual exploitation and abuse and discussed the resulting administrative responsibility, but it did not address situations in which such misconduct amounted to criminal conduct. Disparities in national legislation in the definition of criminal conduct should not be allowed to impede an effective judicial response, since it was the role of the United Nations to codify the law in order to harmonize differences between different legal systems. With regard to immunity, a provision should be included in status-of-forces agreements for peacekeeping operations guaranteeing a waiver of immunity in the event that a United Nations staff member committed an offence subject to criminal prosecution. Such a provision would be in keeping with the general principle of international law against impunity.

39. If a member of a peacekeeping mission committed a crime, the host State should have priority jurisdiction. It was not logical to posit that the exercise of jurisdiction could be shared by the host State and other States. If the capacity of the host State was inadequate, it should be strengthened through assistance. The proposal to set up hybrid tribunals would undermine the sovereignty of the host State, and the independence of the judges would be called in question. The report mentioned the possibility that convicted offenders might be transferred to serve their sentences elsewhere if the host State lacked adequate custodial institutions. If such were the case the appropriate solution would be to fill that gap by assisting in the building of detention facilities, rather than undermining the host State's sovereign exercise of its criminal jurisdiction. His delegation also did not see the justification for endowing a peacekeeping operation with a mandate that would allow it to set up a legal system separate from that of the host State.

40. The report mentioned that the international community had accepted that certain crimes were of such gravity that the only effective way of dealing with them was through the establishment of international courts and tribunals. His delegation agreed with the Group of Legal Experts as to the difficulties of such an option with respect to crimes committed in peacekeeping operations. It was unlikely that those crimes would fall into the category of grave crimes, and in any case it would be desirable for the perpetrators to be tried in national courts.

41. His delegation welcomed in principle the elaboration of a draft convention on the criminal accountability of United Nations officials and experts on mission and thought that the draft proposed in annex III to the report (A/61/980) represented an adequate basis for further elaboration and enrichment in order to address the question of accountability in a comprehensive manner. The Committee could establish a working group to consider the draft.

Agenda item 76: Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives (*continued*) (A/C.6/61/L.5)

42. **Ms. Sotaniemi** (Finland), introducing draft resolution A/C.6/61/L.5, said that, in addition to the 44 sponsors listed in the draft resolution, Madagascar, the Netherlands, Peru, the Russian Federation and the former Yugoslav Republic of Macedonia had also become sponsors. Attacks worldwide were a continuing reminder of the need to demonstrate the commitment of Member States to act upon violations of the security and the safety of diplomatic and consular missions and representatives and prevent future attacks. In order to raise awareness of the problem, States were urged to comply with the reporting procedures. There were technical updates in footnote 1 and paragraph 13, but the only substantive changes were the inclusion of the phrase "including during a period of armed conflict" in paragraphs 3 and 4. A need had been noticed for a concordance of all the official languages. The sponsors hoped that the resolution could be adopted by consensus.

43. **Mr. Kanu** (Sierra Leone), **Mr. Sifana** (Burkina Faso), **Mr. Stastoli** (Albania), **Mr. Gümrükçü** (Turkey), **Mr. Zinsou** (Benin), **Mr. Tchatchouwo** (Cameroon), **Mr. Baldé** (Guinea), **Mr. Quesada López** (Honduras) and **Mr. Muhumuza** (Uganda) said that their delegations wished to become sponsors of the resolution.

44. *Draft resolution A/C.6/61/L.5 was adopted.*

The meeting rose at 12.55 p.m.